

REAL ESTATE TRANSFER NEWS
February 1994

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to: Bureau of Utility and Special Taxes
Wisconsin Department of Revenue P.O. Box 8933
Madison, WI 53708-8933

1Q. Wisconsin's Limited Liability Company (LLC) law is effective January 1, 1994. Have there been any changes to the exemptions from the transfer fee per s. 77.25, Stats. regarding LLCs?

1A. Yes; 1993 Wisconsin Act 112, effective for conveyances on or after January 1, 1994, has amended a definition and created a new exemption as follows:

1. s. 77.21(1e), Stats. defining "mergers" has been amended to include LLCs as follows:

"Mergers of corporations" means the combination of 2 or more corporations under a plan of merger or a plan of consolidation or the combination of 2 or more limited liability companies under a plan of merger."

The definition effects s. 77.25(6), Stats. to include mergers between LLCs as well as corporations. Note that this does not allow an exemption for mergers between LLCs and corporations.

2. s. 77.25(15s) is a newly created exemption:

"Between a limited liability company and one or more of its members if all of the members are related to each other as spouses, lineal ascendants, lineal descendants, siblings, or spouses of siblings and if the transfer is for no consideration other than the assumption of debt or an interest in the limited liability company."

Note this exemption is treated the same as exemption 15m between certain family members and a partnership.

2Q. Please provide some examples of LLC conveyances that would be exempt from fee and those that would be subject to fee.

2A. Exempt conveyances per s. 77.25(15s), Stats:

1. To or from a LLC and individuals who are members and related as stated in the exemption. The property may also be indebted.

Exempt conveyances per s. 77.25(6), Stats:

1. A LLC merges with another LLC by filing proper notice with Secretary of State's Office.

2A. Examples of LLC conveyances subject to fee per s. 77.22, Stats:

1. From a corporation or partnership to a LLC whose members are the same as the shareholders in the corporation or partners in the partnership - FEE DUE ON FULL VALUE OF REAL PROPERTY.
2. From a LLC consisting of multiple members to only one member upon liquidation - FEE DUE ON FULL VALUE OF REAL PROPERTY.
3. Merger between a corporation and a LLC (if possible) - FEE DUE ON FULL VALUE OF REAL PROPERTY.

The above is not intended to be a complete listing of exempt or taxable conveyances. As the use of LLCs become more common, more questions will be addressed in future Newsletters.

3Q. Would you give us the land contract highlights of Russel Reppen's presentation at the December State Bar CLE Seminar?

3A. The following is a copy of the outline used for the land contract presentation:

I. OVERVIEW AND SIGNIFICANCE

Land contracts and the imposition of transfer fee.

A. Budget Bill, 1991 Wisconsin Act 269, repealed the deferral of fees on land contracts per s. 77.22(2), Stats.

B. Effective for ALL land contracts submitted for recording on or after August 1, 1992.

C. Effective for any amendment of land contracts.

D. Certain exemptions from fee do not apply to land contracts. II. FEE IMPOSED S. 77.22(1), STATS.

A. A transfer fee is imposed at the time the land contract is submitted for recording.

B. Transfer fee rates for land contracts dated:

Prior to December 17, 1971 - No Fee Due 12/17/71 to 08/31/81 \$1.00 per \$1,000
09/01/81 to Present \$3.00 per \$1,000

C. The value subject to fee is the total principal amount that the buyer agrees to pay the seller for the real estate.

D. Since the deferral has been repealed, any assignment, amendment or adjustment involving the vendee to an original land contract that was recorded deferring the fee will cause the fee to be due and payable when the instrument is recorded.

E. Since the deferral has been repealed, any deed in partial satisfaction of an original land contract that was recorded deferring the fee will cause the fee to be due and payable on the total value when the instrument is recorded.

III. EXEMPTIONS FROM FEE (per 77.25, Stats.)

A. Exemption 17 is used when recording a deed in satisfaction when the fee has been previously paid either on an amendment or on

the original land contract. The transfer return should indicate type of conveyance as "Other" and explain "fee paid on document number

B. A deed from the vendee back to the vendor under foreclosure or in lieu of foreclosure is exempt per exemption 14. This transaction will not qualify for a refund of the transfer fee paid when the original land contract was recorded.

C. Exemption 1 is used when recording a deed in satisfaction of a land contract dated prior to December 17, 1971.

IV. CONVEYANCES NOT EXEMPT FROM FEE (per 77.25, Stats.)

A. A land contract between parent and child is NOT exempt from fee per exemption 8. The exemption requires the conveyance to be for no or nominal consideration.

B. Deeds in satisfaction of a land contract caused by will, descent or survivorship. Exemption 11 may not be used since the original land contract conveyed the real property and the deed in satisfaction is only conveying a personal interest in the debt or obligation per the Doctrine of Equitable Conversion.

C. ANY deed to the vendee in satisfaction or amendment of a land contract where the fee was deferred is NOT EXEMPT from a real estate transfer fee.

V. ASSIGNMENTS OF LAND CONTRACTS

A. A deed which transfers the interest of a vendor in a land contract to another is excluded from a transfer return and fee.

A vendor's interest in a land contract becomes personal property under equitable conversion; therefore, does not provide for the passage of real estate interest. (Tax 15.04(4), Wis. Adm. Code)

B. A sale or assignment of a vendee's interest is subject to both a transfer return and fee based upon the full actual consideration paid or to be paid including the balance of the land contract. (Tax 15.04(3), Wis. Adm. Code)

C. A sale or assignment of a vendee's interest also triggers the transfer fee due and payable on any deferred original land contract. In most cases, the vendor must give approval of the assignment and the original vendee has been given credit for payment of the transfer fee so there should be no hardship in payment of the original contract.

The above land contract outline is general in nature. More specific questions are in the "Guidelines" and in the following questions.

- 4Q. When two fees are due on a vendee's assignment of a land contract (one on the assignment and one on the deferred original land contract per Q. 2, November 1993 Newsletter and Outline V; B & C), how do you record the fees when only one document is recorded?
- 4A. Two transfer returns are required, one for the assignment and another one regarding the original land contract with appropriate fees for each. The two fees are stamped on the assignment and the same recording data is placed on the bottom of both transfer returns. Note that if a consent to assignment is recorded by the vendor, the second transfer return should be used for that document.
- 5Q. Is a transfer fee due on the deferred original land contract when there is a vendee's assignment of a land contract collateral interest only to a bank?
- 5A. Yes, any assignment of a vendee's interest in a land contract where the original land contract fee was deferred requires a transfer return and fee based upon the original land contract value. Only one transfer return and fee is required concerning the original land contract, the collateral assignment is not subject to a transfer return and fee. The assignment will be stamped indicating the transfer fee paid for the original land contract. See Question 7 regarding the deed in satisfaction.
- 6Q. Is a return needed when there is an amendment of a land contract reflecting an increased interest rate or longer term where the fee was paid when the land contract was recorded?
- 6A. No. However, the amendment should include the recording data of the original land contract for verification that a fee was paid. Note that if the value changes, a transfer return is required.
- 7Q. How should a transfer return be completed when exemption number 17 is used?
- 7A. When the transfer fee has been properly paid on the original, amendment, or assignment, etc., the deed in satisfaction is exempt per s. 77.25(17), Stats. Fill out the transfer return in the manner required except for the following lines:
- a. Line 18: the type of transfer is "OTHER" and explain "Fee paid on document number_____". The original land contract was the "SALE" and this document is "OTHER" as a satisfaction.
 - b. Line 21: check box and fill in date of original land contract.
 - c. Line 27: exemption number 17.

8Q. When can a correction deed be re-recorded without a transfer return?

8A. A deed that is to be re-recorded does not need a transfer return correcting typing errors such as misspelled names, legal descriptions etc. However, if a name is added or more property is added, the judgment of the Register of Deeds Office should be used. If in doubt, express that doubt and require a transfer return. A re-recorded deed is defined as a deed that has been previously recorded and has the original recording information stamped on it. Also, if a "new" deed is used, that deed should indicate the recording data of the deed being corrected. (Note "Guidelines" Revised June 1993, page 11 for prior question on re-recordings).

9Q. Is a fee due when one person is conveying their half interest to another unrelated person who holds the other half interest and no money is exchanged?

9A. Yes, a fee is due on the one half the real property value conveyed. The fee is imposed upon a conveyance of a real property interest. The fact that no money is exchanged makes no difference. The use of exemption 8 does not apply since they are unrelated. The use of exemption 5 as partition does not apply since one is giving up an interest and one is gaining an interest. Partition does not convey an interest of real property.

10Q. Have the instructions to the Register of Deeds, "CRITERIA FOR A COMPLETED REAL ESTATE TRANSFER RETURN" been revised?

10A. Yes, a copy of PE-100 (R. 2-94) is attached. Please note the following areas have created problems as noted by the DOR Property Tax District Offices by not being completed properly:

- a. Line 2 - Incomplete grantor address.
- b. Line 6 - Grantor/grantee related when Family or other is checked, explanation MUST be completed.
- c. PART V - Lines 15, 16 & 17, boxes and lines not being completed.
- d. Line 18 - Type of Transfer boxes not checked and if "Other" is checked, explanation MUST be completed.
- e. PART IX - MUST be completed with social security numbers and telephone numbers.